

# SENATE AMENDMENT NO. \_\_\_\_\_

Offered by \_\_\_\_\_ of \_\_\_\_\_

Amend SCS/House Bill No. 2081, Page 4, Section 331.011, Line 28,

by inserting after all of said line the following:

"436.005. As used in sections 436.005 to [436.071] 436.072, unless the context otherwise requires, the following terms shall mean:

(1) "Beneficiary", the individual who is to be the subject of the disposition and who will receive funeral services, facilities or merchandise described in a preneed contract;

(2) "Division", the division of professional registration of the department of [economic development] insurance, financial institutions and professional registration;

(3) "Funeral merchandise", caskets, grave vaults, or receptacles, and other personal property incidental to a funeral or burial service, and such term shall also include grave lots, grave space, grave markers, monuments, tombstones, crypts, niches or mausoleums [if, but only if, such items are sold:

(a) By a companion agreement which is sold in contemplation of trade or barter for grave vaults or funeral or burial services and funeral merchandise; or

(b) At prices, in excess of prevailing market prices, intended to be offset by reductions in the costs of funeral or

1 burial services or facilities which are not immediately  
2 required];

3 (4) "Person", any individual, partnership, corporation,  
4 cooperative, association, or other entity;

5 (5) "Preneed contract", any contract or other arrangement  
6 which requires the [current] payment of money or other property  
7 in consideration for the final disposition of a dead human body,  
8 or for funeral or burial services or facilities, or for funeral  
9 merchandise, where such disposition, services, facilities or  
10 merchandise are not immediately required, including, but not  
11 limited to, an agreement providing for a membership fee or any  
12 other fee having as its purpose the furnishing of burial or  
13 funeral services or merchandise at a discount, except for  
14 contracts of insurance, including payment of proceeds from  
15 contracts of insurance, unless the preneed seller or provider is  
16 named as the owner or beneficiary in the contract of insurance.  
17 In no instance shall preneed contract be funded by term life  
18 insurance;

19 (6) "Preneed trust", a trust established by a seller, as  
20 grantor, to receive deposits of, administer, and disburse  
21 payments received under preneed contracts by such seller,  
22 together with income thereon;

23 (7) "Provider", the person obligated to provide the  
24 disposition and funeral services, facilities, or merchandise  
25 described in a preneed contract;

26 (8) "Purchaser", the person who is obligated to make  
27 payments under a preneed contract;

28 (9) "Seller", the person who sells a preneed contract to a  
29 purchaser and who is obligated to collect and administer all

1 payments made under such preneed contract;

2 (10) "State board", the Missouri state board of embalmers  
3 and funeral directors;

4 (11) "Trustee", the trustee of a preneed trust, including  
5 successor trustees.

6 436.007. 1. Each preneed contract made after August 13,  
7 1982, shall be void and unenforceable unless:

8 (1) It is in writing;

9 (2) It is executed by a seller who is in compliance with  
10 the provisions of section 436.021;

11 (3) It identifies the contract beneficiary and sets out in  
12 detail the final disposition of the dead body and funeral  
13 services, facilities, and merchandise to be provided;

14 (4) It identifies the preneed trust into which contract  
15 payments shall be deposited, including the name and address of  
16 the trustee thereof;

17 (5) The terms of such trust and related agreements among  
18 two or more of the contract seller, the contract provider, and  
19 the trustee of such trust are in compliance with the provisions  
20 of sections 436.005 to ~~[436.071]~~ 436.072;

21 (6) It contains the name and address of the seller and the  
22 provider.

23 2. If a preneed contract does not comply with the  
24 provisions of sections 436.005 to ~~[436.071]~~ 436.072, all payments  
25 made under such contract shall be recoverable by the purchaser,  
26 his heirs, or the purchaser's legal representative, from the  
27 contract seller or other payee thereof, together with interest at  
28 the rate of ten percent per annum and all reasonable costs of  
29 collection, including attorneys' fees.

1           3. Each preneed contract made before August 13, 1982, and  
2 all payments and disbursements under such contract shall continue  
3 to be governed by sections 436.010 to 436.080, as those sections  
4 existed at the time the contract was made; but, the provisions of  
5 subsection 2 of section 436.035 may be applied to all preneed  
6 contracts which are executory on August 13, 1982.

7           4. Subject to the provisions of subdivision (5) of section  
8 436.005, the provisions of sections 436.005 to ~~[436.071]~~ 436.072  
9 shall apply to the assignment of proceeds of any contract of  
10 insurance for the purpose of funding a preneed contract or  
11 written in conjunction with a preneed contract. Laws regulating  
12 insurance shall not apply to preneed contracts, but shall apply  
13 to any insurance sold with a preneed contract.

14           5. No preneed contract shall become effective unless and  
15 until the purchaser thereof has placed his or her signature in a  
16 space provided on such contract, or application therefor, and the  
17 purchaser has received a copy of such contract signed by the  
18 seller.

19           6. The seller and the provider of a preneed contract may be  
20 the same person.

21           436.011. 1. Any seller who designates a person as a  
22 provider in a preneed contract without a contractual relationship  
23 with such person is in violation of the provisions of sections  
24 436.005 to ~~[436.071]~~ 436.072. Upon request of the board, a  
25 licensed seller or provider shall provide a copy of any preneed  
26 contract or any contract or agreement with a seller or provider.

27           2. Any person who knowingly permits a seller to sell a  
28 preneed contract designating him as the provider or as one of two  
29 or more providers who will furnish the funeral merchandise and

1 services described in the preneed contract shall provide the  
2 funeral merchandise and services described in the preneed  
3 contract for the beneficiary. Failure of any such person to do  
4 so shall be a violation of the provisions of sections 436.005 to  
5 ~~[436.071]~~ 436.072 and shall be cause for suspension or revocation  
6 of that person's license under the provisions of section 333.061,  
7 RSMo.

8 3. If a provider has knowledge that a seller is designating  
9 him or her as the provider of funeral merchandise and services  
10 under any preneed contract and fails within thirty days after  
11 first obtaining such knowledge to take action to prevent the  
12 seller from so designating him or her as the provider, the  
13 provider shall be deemed to have consented to such designation.

14 436.015. 1. No person shall perform or agree to perform  
15 the obligations of, or be designated as, the provider under a  
16 preneed contract unless, at the time of such performance,  
17 agreement or designation:

18 (1) Such person is licensed by the state board as a funeral  
19 establishment pursuant to the provisions of section 333.061,  
20 RSMo, but such person need not be licensed as a funeral  
21 establishment if ~~[he]~~ such person is the owner of real estate  
22 situated in Missouri which has been formally dedicated for the  
23 burial of dead human bodies and the contract only provides for  
24 the delivery of one or more grave vaults at a future time and is  
25 in compliance with the provisions of chapter 214, RSMo; and

26 (2) Such person is registered to conduct business with the  
27 secretary of state and is licensed with the state board as a  
28 provider and pays a licensing fee to be established by the board  
29 and files with the state board a written consent authorizing the

1 state board to order an investigation, examination [and if  
2 necessary an audit by the staff of the division of professional  
3 registration who are not connected with the board], or audit of  
4 its joint accounts or books and records which contain information  
5 concerning preneed contracts sold for, [in] on behalf of, or in  
6 which he or she is named as provider of the described funeral  
7 merchandise or services. The state board may order an  
8 investigation to determine compliance with sections 436.005 to  
9 436.072.

10 2. Each provider under one or more preneed contracts shall:

11 (1) Furnish the state board in writing with the name and  
12 address of each seller authorized by the provider to sell preneed  
13 contracts in which the provider is named as such within fifteen  
14 days after the provider signs a written agreement or  
15 authorization permitting the seller to sell preneed contracts  
16 designating or obligating the provider as the "provider" under  
17 the contract. This notification requirement shall include a  
18 provider who, itself, acts as seller;

19 (2) Pay an annual fee and file annually with the state  
20 board by the thirty-first day of October a report [which].  
21 Annual reports filed after the date provided in this section  
22 shall be subject to a late fee of one hundred dollars for every  
23 six months past the renewal deadline or an amount determined by  
24 the board by rule. The annual report shall contain:

25 (a) The business name or names of the provider and all  
26 addresses from which it engages in the practice of its business;

27 (b) The name and address of each seller with whom it has  
28 entered into a written agreement since last filing a report and a  
29 list including the name, contract number, and amount of each

1 preneed contract, the phone number and address of the purchaser  
2 as identified in the contract, and the total payments collected  
3 by the provider for each preneed contract since the last annual  
4 report filed with the board;

5 (c) The name and address of the custodian of its books and  
6 records containing information about preneed contract sales and  
7 services; and

8 (d) The name and address of the financial institutions in  
9 which joint accounts are held as authorized by section 436.053,  
10 or that issued any certificate of deposit purchased on behalf of  
11 a preneed contract beneficiary;

12 (3) Cooperate with the state board, the office of the  
13 attorney general of Missouri, and the division in any  
14 investigation, examination or audit brought under the provisions  
15 of sections 436.005 to ~~[436.071]~~ 436.072;

16 (4) At least thirty days prior to selling or otherwise  
17 disposing of its business assets, or its stock if a corporation,  
18 or ceasing to do business, give written notification to the state  
19 board and to all sellers with whom it has one or more preneed  
20 contracts of its intent to engage in such sale or to cease doing  
21 business. In the case of a sale of assets or stock, the written  
22 notice shall also contain the name, phone number, and address of  
23 the purchaser. Upon receipt of such written notification, the  
24 state board may take reasonable and necessary action to determine  
25 that any preneed contracts which the provider is obligated to  
26 service will be satisfied at the time of need, including, but not  
27 limited to, an examination of books and records or audit of any  
28 joint account. The state board may waive the requirements of  
29 this subsection, or may shorten the period of notification

1 whenever in its discretion it determines that compliance with its  
2 provisions are not necessary. Failure of the state board to take  
3 action regarding such sale or termination of business within  
4 thirty days shall constitute such a waiver.

5 3. It is a violation of the provisions of sections 436.005  
6 to ~~[436.071]~~ 436.072 and subdivision (3) of section 333.121,  
7 RSMo, for any person to sell, transfer or otherwise dispose of  
8 the assets of a provider without first complying with the  
9 provisions of subdivision (4) of subsection 2 of this section.  
10 This violation shall be in addition to the provisions of section  
11 436.061.

12 4. If any licensed embalmer, funeral director or licensed  
13 funeral establishment shall knowingly allow such licensee's name  
14 to be designated as the provider under, or used in conjunction  
15 with the sale of, any preneed contract, such licensee shall be  
16 liable for the provider's obligations under such contract.

17 5. With respect to a provider or seller licensed under the  
18 provisions of chapter 333, RSMo, any violation of the provisions  
19 of sections 436.005 to 436.071 shall constitute a violation of  
20 subdivision (3) of section 333.121, RSMo.

21 436.021. 1. No person, including without limitation a  
22 person who is a provider under one or more preneed contracts,  
23 shall sell, perform or agree to perform the seller's obligations  
24 under, or be designated as the seller of, any preneed contract  
25 unless, at the time of that sale, performance, agreement, or  
26 designation, that person shall:

27 (1) Be an individual resident of Missouri or a business  
28 entity duly authorized to transact business in Missouri and  
29 registered with the secretary of state;

1 (2) Have established, as grantor, a preneed trust or trusts  
2 with terms consistent with sections 436.005 to 436.071;

3 (3) Have registered with the state board and have paid a  
4 licensing fee to be established by the board by rule.

5 2. In lieu of establishing a trust, the applicant may  
6 certify to the board that a whole life insurance policy will be  
7 purchased on the life of the beneficiary for each preneed  
8 contract, or that a certificate of deposit will be purchased on  
9 behalf of the beneficiary of the contract, provided that no  
10 amount shall be borrowed against such certificate, nor shall such  
11 certificates be redeemed for their cash value, until the terms of  
12 the contract have been fully performed.

13 3. Each seller under one or more preneed contracts shall:

14 (1) Maintain adequate records of all such contracts and  
15 related agreements with providers and the trustee of preneed  
16 trusts regarding such contracts, including copies of all such  
17 agreements;

18 (2) Notify the state board in writing of the name and  
19 address of each provider who has authorized the seller to sell  
20 one or more preneed contracts under which the provider is  
21 designated or obligated as the contract's "provider";

22 (3) File annually with the state board by the thirty-first  
23 day of October a signed and notarized report on forms provided by  
24 the state board and pay the annual renewal fee established by the  
25 board by rule. Annual reports filed after the date provided in  
26 this section shall be subject to a late fee of one hundred  
27 dollars for every six months past the renewal deadline or any  
28 amount as determined by the board by rule. Any seller who fails  
29 to file their annual report on or before the thirty-first day of

1 October shall be prohibited from selling any preneed contracts  
2 until the annual report, and all applicable fees, have been paid  
3 to the board. Such [a] report shall [only] contain:

4 (a) The date the report is submitted and the date of the  
5 last report;

6 (b) The name and address of each provider with whom it is  
7 under contract;

8 (c) The total number of preneed contracts sold in Missouri  
9 since the filing of the last report and a detailed list including  
10 the name, contract number, amount of each preneed contract the  
11 seller has written in Missouri since the last filing report, the  
12 amount the seller has received as payment for each preneed  
13 contract and the address and phone number of the purchaser as  
14 reflected in the contract;

15 (d) The total face value of all preneed contracts sold in  
16 Missouri since the filing of the last report;

17 (e) The name and address of the insurance company issuing a  
18 whole life insurance policy on the life of each beneficiary for  
19 each preneed contract or the financial institution in Missouri in  
20 which it maintains the trust accounts required under the  
21 provisions of sections 436.005 to [436.071] 436.072 and the  
22 account numbers of such trust accounts, or the financial  
23 institution that issued any certificate of deposit purchased on  
24 behalf of a preneed contract beneficiary;

25 (f) A consent authorizing the state board to order an  
26 examination and if necessary an audit [by staff of the division  
27 of professional registration who are not connected with the  
28 board] of the trust account, designated by depository and account  
29 number. [The staff of the division of professional registration

1 in conducting the audit shall not release a detailed accounting  
2 of the trust account to the board unless there exist  
3 circumstances indicating that the account does not comply with  
4 the requirements of sections 436.005 to [436.071] 436.072, but  
5 shall provide the board with a summary of the examination or  
6 audit showing general compliance with the provisions of sections  
7 436.005 to 436.071];

8 (4) File with the state board a consent authorizing the  
9 state board to order an investigation, examination and if  
10 necessary an audit [by staff of the division of professional  
11 registration who are not connected with the board] of its books  
12 and records relating to the sale of preneed contracts and the  
13 name and address of the person designated by the seller as  
14 custodian of these books and records. [The staff of the division  
15 of professional registration in conducting the audit shall not  
16 release a detailed accounting of the trust account to the board  
17 unless there exist circumstances indicating that the account does  
18 not comply with the requirements of sections 436.005 to 436.071,  
19 but shall provide the board with a summary of the examination or  
20 audit showing general compliance with the provisions of sections  
21 436.005 to 436.071];

22 (5) Cooperate with the state board, the office of the  
23 attorney general, [and] the division, the division of finance,  
24 and the division of insurance in any investigation, examination  
25 or audit brought under the provisions of sections 436.005 to  
26 [436.071] 436.072.

27 [3.] 4. Prior to selling or otherwise disposing of a  
28 majority of its business assets, or a majority of its stock if a  
29 corporation, or ceasing to do business as a seller, the seller

1 shall provide written notification to the state board of its  
2 intent to engage in such sale at least sixty days prior to the  
3 date set for the closing of the sale, or of its intent to cease  
4 doing business at least sixty days prior to the date set for  
5 termination of its business. The written notice shall be sent,  
6 at the same time as it is provided to the state board, to all  
7 providers who are then obligated to provide funeral services or  
8 merchandise under preneed contracts sold by the seller. Upon  
9 receipt of the written notification, the state board may take  
10 reasonable and necessary action to determine that the seller has  
11 made proper plans to assure that the trust [assets] accounts of  
12 the seller will be set aside and used to service outstanding  
13 preneed contracts sold by the seller, including, but not limited  
14 to, an examination of books and records or audit of the trust  
15 account. The state board may waive the requirements of this  
16 subsection or may shorten the period of notification whenever in  
17 its discretion it determines that compliance with its provisions  
18 are not necessary. Failure of the state board to take action  
19 regarding such sale or termination of business within sixty days  
20 shall constitute such a waiver.

21 [4.] 5. It is a violation of the provisions of sections  
22 436.005 to [436.071] 436.072 for any person to sell, transfer or  
23 otherwise dispose of the assets of a seller without first  
24 complying with the provisions of subsection 3 of this section.

25 436.027. The seller may retain as his or her own money, for  
26 the purpose of covering his selling expenses, servicing costs,  
27 and general overhead, the initial funds so collected or paid  
28 until he or she has received for his or her use and benefit an  
29 amount not to exceed twenty percent of the total amount agreed to

1 be paid by the purchaser of such prepaid funeral benefits as such  
2 total amount is reflected in the contract. After the seller  
3 retains the amount authorized by this section, all funds paid to  
4 the purchaser shall be placed in trust, or shall be used to  
5 purchase insurance or certificates of deposit, as authorized by  
6 this chapter.

7 436.031. 1. The trustee of a preneed trust shall be a  
8 state or federally chartered financial institution authorized to  
9 exercise trust powers in Missouri. The trustee shall accept all  
10 deposits made to it by the seller of a preneed contract and shall  
11 hold, administer, and distribute such deposits, in trust, as  
12 trust principal, pursuant to the provisions of sections 436.005  
13 to ~~[436.071]~~ 436.072. Payments regarding two or more preneed  
14 contracts may be deposited into and commingled in the same  
15 preneed trust, so long as the trust's grantor is the seller of  
16 all such preneed contracts and the trustee maintains adequate  
17 records of all payments received.

18 2. All property held in a preneed trust, including  
19 principal and undistributed income, shall be invested and  
20 reinvested by the trustee thereof. The trustee shall exercise  
21 such judgment and care under circumstances then prevailing which  
22 men of ordinary prudence, discretion, and intelligence exercise  
23 in the management of their own affairs, not in regard to  
24 speculation but in regard to the permanent disposition of their  
25 ~~[funds]~~ moneys, considering the probable income therefrom as well  
26 as the probable safety of their capital. [A preneed trust  
27 agreement may provide that when the principal and interest in a  
28 preneed trust exceeds two hundred fifty thousand dollars,  
29 investment decisions regarding the principal and undistributed

1 income may be made by a federally registered or  
2 Missouri-registered independent qualified investment advisor  
3 designated by the seller who established the trust; provided,  
4 that title to all investment assets shall remain with the trustee  
5 and be kept by the trustee to be liquidated upon request of the  
6 advisor of the seller.】 In no case shall control of said assets  
7 be divested from the trustee nor shall said assets be placed in  
8 any investment which would be beyond the authority of a  
9 reasonably prudent trustee to invest in. 【The trustee shall be  
10 relieved of all liability regarding investment decisions made by  
11 such qualified investment advisor.】

12 3. The seller of a preneed contract shall be entitled to  
13 all income, including, without limitation, interest, dividends,  
14 and capital gains, and losses generated by the investment of  
15 preneed trust property regarding such contract, and the trustee  
16 of the trust may distribute all income, net of losses, to the  
17 seller at least annually; but no such income distribution shall  
18 be made to the seller if, and to the extent that, the  
19 distribution would reduce the aggregate market value on the  
20 distribution date of all property held in the preneed trust,  
21 including principal and undistributed income, below the sum of  
22 all deposits made to such trust pursuant to subsection 1 of this  
23 section for all preneed contracts then administered through such  
24 trust.

25 4. All expenses of establishing and administering a preneed  
26 trust, including, without limitation, trustee's fees, legal and  
27 accounting fees, investment expenses, and taxes, shall be paid or  
28 reimbursed directly by the seller of the preneed contracts  
29 administered through such trust and shall not be paid from the

1 principal of a preneed trust.

2 5. The trustee of a preneed trust shall maintain adequate  
3 books of account of all transactions administered through the  
4 trust and pertaining to the trust generally. The trustee shall  
5 assist the seller who established the trust or its successor in  
6 interest in the preparation of the annual report described in  
7 subdivision (3) of subsection 2 of section 436.021. The seller  
8 shall furnish to each contract purchaser, within fifteen days  
9 after receipt of the purchaser's written request, a written  
10 statement of all deposits made to such trust regarding such  
11 purchaser's contract.

12 6. The trustee of a preneed trust shall, from time to time,  
13 distribute trust principal as provided by sections 436.005 to  
14 ~~[436.071]~~ 436.072.

15 7. A preneed trust shall terminate when trust principal no  
16 longer includes any payments made under any preneed contract, and  
17 upon such termination the trustee shall distribute all trust  
18 property, including principal and undistributed income, to the  
19 seller which established the trust.

20 436.048. If a seller shall fail to make timely payment of  
21 an amount due a purchaser or a provider pursuant to the  
22 provisions of sections 436.005 to ~~[436.071]~~ 436.072, the  
23 purchaser or provider, as appropriate, shall have the right, in  
24 addition to other rights and remedies against such seller, to  
25 make demand upon the trustee of the preneed trust for the  
26 contract to distribute to the purchaser or provider from the  
27 trust, as damages for its breach, an amount equal to all deposits  
28 made into the trust for the contract.

29 436.051. Upon the death or legal incapacity of a

1 purchaser, all rights and remedies granted to the purchaser  
2 pursuant to the provisions of sections 436.005 to [436.071]  
3 436.072 shall be enforceable by and accrue to the benefit of the  
4 purchaser's legal representative or [his] the purchaser's  
5 successor designated in such contract, and all payments otherwise  
6 payable to the purchaser shall be paid to that person.

7 436.053. 1. Notwithstanding the provisions of sections  
8 436.021 to 436.048, the provider and the purchaser may agree that  
9 all [funds] moneys paid the provider by the purchaser shall be  
10 deposited with financial institutions chartered and regulated by  
11 the federal or state government authorized to do business in  
12 Missouri in an account in the joint names and under the joint  
13 control of the provider and purchaser. If the purchaser has  
14 irrevocably waived and renounced his right to cancel the  
15 agreement between the provider and the purchaser pursuant to  
16 subdivision (5) of this subsection, such agreement may provide  
17 that all funds held in the account at the beneficiary's death  
18 shall be applied toward the purchase of funeral or burial  
19 services or facilities, or funeral merchandise, selected by the  
20 purchaser or the responsible party after the beneficiary's death,  
21 in lieu of the detailed identification of such items required by  
22 subdivision (3) of subsection 1 of section 436.007. The  
23 agreement between the provider and purchaser shall provide that:

24 (1) The total consideration to be paid by the purchaser  
25 under the contract shall be made in one or more payments into the  
26 joint account, including the name and address of the financial  
27 institution which holds such moneys and the account numbers of  
28 such moneys, at the time the agreement is executed or, thereafter  
29 within five days of receipt, respectively, and the agreements

1 shall contain the name and address of the financial institution  
2 that holds such moneys and the account numbers of such moneys;

3 (2) The financial institution shall hold, invest, and  
4 reinvest the deposited [funds] moneys in savings accounts,  
5 certificates of deposit or other accounts offered to depositors  
6 by the financial institutions, as the [agreement] contract shall  
7 provide;

8 (3) The income generated by the deposited funds shall be  
9 used to pay the reasonable expenses of administering the  
10 agreement, and the balance of the income shall be distributed or  
11 reinvested as provided in the agreement;

12 (4) At any time before the final disposition, or before  
13 funeral services, facilities, and merchandise described in a  
14 preneed contract are furnished, the purchaser may cancel the  
15 contract without cause by delivering written notice thereof to  
16 the provider and the financial institution, and within fifteen  
17 days after its receipt of the notice, the financial institution  
18 shall distribute the deposited [funds] moneys to the purchaser;

19 (5) Notwithstanding the provisions of subdivision (4) of  
20 this subsection, if a purchaser is eligible, becomes eligible, or  
21 desires to become eligible to receive public assistance under  
22 chapter 208, RSMo, or any other applicable state or federal law,  
23 the purchaser may irrevocably waive and renounce his or her right  
24 to cancel such [agreement] contract. The waiver and renunciation  
25 must be in writing and must be delivered to the provider and the  
26 financial institution, if requested;

27 (6) If the death of the beneficiary occurs outside the  
28 general area served by the provider, then the provider shall  
29 either provide for the furnishing of comparable funeral services

1 and merchandise by a licensed mortuary selected by the purchaser  
2 or, at the provider's option, shall pay over to the purchaser in  
3 fulfillment of the obligation of the preneed contract, an amount  
4 equal to the sums actually paid in cash by such purchaser under  
5 such preneed contract together with interest to be provided for  
6 in the contract, in which event the financial institution shall  
7 distribute the deposited funds to the provider;

8 (7) Within fifteen days after a provider and a witness  
9 certifies in writing to the financial institution that he or she  
10 has furnished the final disposition, or funeral services,  
11 facilities, and merchandise described in a contract, or has  
12 provided alternative funeral arrangements or benefits for the  
13 beneficiary pursuant to special arrangements made with the  
14 purchaser, if the certification has been approved by the  
15 purchaser, then the financial institution shall distribute the  
16 deposited funds to the provider.

17 2. There shall be a separate joint account as described in  
18 subsection 1 of this section for each preneed contract sold or  
19 arranged under this section.

20 3. If the total face value of the contracts sold by a  
21 provider operating solely under the provisions of this section  
22 does not exceed thirty-five thousand dollars in any one fiscal  
23 year, such a provider shall not be required to pay the annual  
24 reporting fee for such year required under subsection 1 of  
25 section 436.069.

26 436.054. It is unlawful for the seller to:

27 (1) The seller to purchase with preneed funds any term life  
28 insurance to fund the preneed contract;

29 (2) The seller to procure or accept any loan against any

1 life insurance contract.

2 436.055. 1. All complaints received by the state board  
3 which allege a [registrant's] licensee's noncompliance with the  
4 provisions of sections 436.005 to [436.071 shall be forwarded to  
5 the division of professional registration for investigation,  
6 except minor complaints which the state board can mediate or  
7 otherwise dispose of by contacting the parties involved] 436.072,  
8 or allege that a licensee has committed any act for which the  
9 board may discipline or refuse to issue a license under section  
10 436.062, may be investigated by the board. A copy of each such  
11 complaint shall be forwarded to the subject [registrant]  
12 licensee, except [that each complaint] the board shall not be  
13 required to forward complaints in which the complainant alleges  
14 [under oath] that a [registrant] licensee has misappropriated  
15 preneed contract payments [may be forwarded to the division of  
16 professional registration without notice to the subject  
17 registrant]. This section shall not be construed to limit the  
18 board's authority to file a complaint with the administrative  
19 hearing commission charging a licensee of the board with any  
20 actionable conduct or violation, regardless of whether such  
21 complaint exceeds the scope of acts charged in a preliminary  
22 public complaint filed with the board and whether any public  
23 complaint has been filed with the board.

24 2. [The division shall investigate each complaint forwarded  
25 from the state board using staff who are not connected with the  
26 state board and shall forward the results of such investigation  
27 to the subject registrant and to the attorney general for  
28 evaluation. If the attorney general, after independent inquiry  
29 using staff of the attorney general's office who have not

1 represented the board, determines that there is no probable cause  
2 to conclude that the registrant has violated sections 436.005 to  
3 436.071, the registrant and the state board shall be so notified  
4 and the complaint shall be dismissed; but, if the attorney  
5 general determines that there is such probable cause the  
6 registrant shall be so notified and the results of such  
7 evaluation shall be transmitted to the state board for further  
8 action as provided in sections 436.061 and 436.063] The board may  
9 investigate, examine or audit the books or records of any  
10 licensee, or examine or audit a preneed trust or joint account,  
11 at any time to ensure a licensee's compliance with the provisions  
12 of sections 436.005 to 436.072. The board shall have authority  
13 to conduct random inspections or audits with or without cause.

14 3. Upon determining that an inspection, investigation,  
15 examination or audit shall be conducted, the board shall issue a  
16 notice authorizing one or more employees or independent  
17 contractors to perform such inspection, investigation,  
18 examination or audit and instructing such employees or  
19 independent contractors as to the scope of such inspection,  
20 investigation, examination or audit. The board shall not appoint  
21 any employee or contract if such employee or contractor either  
22 directly or indirectly has a conflict of interest or is  
23 affiliated with the management of, or owns a pecuniary interest  
24 in, any person subject to inspection, investigation, examination  
25 or audit under section 436.005 to 436.072. The board may request  
26 that the director of the division of professional registration or  
27 the director of the department of insurance, financial  
28 institutions and professional registration designate one or more  
29 financial examiners to assist in any examination or audit. The

1 board may assess the cost of any related inspection,  
2 investigation, examination or audit to the licensee.

3 436.061. 1. Each person including the officers, directors,  
4 partners, agents, or employees of such person who shall knowingly  
5 and willfully violate or assist or enable any person to violate  
6 any provision of sections 436.005 to ~~[436.071,~~ and any officer,  
7 director, partner, agent, or employee of such person involved in  
8 such violation] 436.072 by incompetence, misconduct, gross  
9 negligence, fraud, misrepresentation, or dishonest is guilty of a  
10 class D felony. Each violation of any provision of sections  
11 436.005 to ~~[436.071]~~ 436.072 constitutes a separate offense and  
12 may be prosecuted individually. The attorney general shall have  
13 concurrent jurisdiction with any local prosecutor to prosecute  
14 under this section.

15 2. Any violation of the provisions of sections 436.005 to  
16 ~~[436.071]~~ 436.072 shall constitute a violation of the provisions  
17 of section 407.020, RSMo. In any proceeding brought by the  
18 attorney general for a violation of the provisions of sections  
19 436.005 to ~~[436.071]~~ 436.072, the court may order all relief and  
20 penalties authorized under chapter 407, RSMo, and, in addition to  
21 imposing the penalties provided for in sections 436.005 to  
22 ~~[436.071]~~ 436.072, order the revocation or suspension of the  
23 ~~[registration]~~ license of a defendant seller or provider.

24 436.062. 1. The board may refuse to issue any certificate  
25 of registration or authority, permit or license required under  
26 this chapter for one or any combination of causes stated in  
27 subsection 2 of this section. The board shall notify the  
28 applicant in writing of the reasons for the refusal and shall  
29 advise the applicant of his or her right to file a complaint with

1 the administrative hearing commission as provided by chapter 621,  
2 RSMo.

3 2. The board may cause a complaint to be filed with the  
4 administrative hearing commission as provided by chapter 621,  
5 RSMo, against any holder of any certificate of registration or  
6 authority, permit or license required by sections 436.005 to  
7 436.072 or any person who has failed to renew or has surrendered  
8 his or her certificate of registration or authority, permit or  
9 license for any one or any combination of the following causes:

10 (1) Use of any controlled substance, as defined in chapter  
11 195, RSMo, or alcoholic beverage to an extent that such use  
12 impairs a person's ability to perform the work of any profession  
13 licensed or regulated by sections 436.005 to 436.072;

14 (2) The person has been finally adjudicated and found  
15 guilty, or entered a plea of guilty or nolo contendere, in a  
16 criminal prosecution under the laws of any state or of the United  
17 States, for any offense reasonably related to the qualifications,  
18 functions or duties of any profession licensed or regulated under  
19 sections 436.005 to 436.072, for any offense involving a  
20 controlled substance, or for any offense an essential element of  
21 which is fraud, dishonesty or an act of violence, or for any  
22 offense involving moral turpitude, whether or not sentence is  
23 imposed;

24 (3) Use of fraud, deception, misrepresentation or bribery  
25 in securing any certificate of registration or authority, permit  
26 or license issued under this chapter or in obtaining permission  
27 to take any examination given or required under sections 436.005  
28 to 436.072;

29 (4) Obtaining or attempting to obtain any fee, charge,

1 tuition or other compensation by fraud, deception or  
2 misrepresentation;

3 (5) Incompetency, misconduct, gross negligence, fraud,  
4 misrepresentation or dishonesty in the performance of the  
5 functions or duties of any profession licensed or regulated by  
6 sections 436.005 to 436.072;

7 (6) Violation of, or assisting or enabling any person to  
8 violate, any provision of this chapter, or of any lawful rule or  
9 regulation adopted under sections 436.005 to 436.072;

10 (7) Impersonation of any person holding a certificate of  
11 registration or authority, permit or license or allowing any  
12 person to use his or her certificate of registration or  
13 authority, permit, license or diploma from any school;

14 (8) Disciplinary action against the holder of a license or  
15 other right to practice any profession regulated by sections  
16 436.005 to 436.072 granted by another state, territory, federal  
17 agency or country upon grounds for which revocation or suspension  
18 is authorized in this state;

19 (9) A person is finally adjudged insane or incompetent by a  
20 court of competent jurisdiction;

21 (10) Misappropriation of preneed funds or funds belonging  
22 to a preneed trust or joint account holding preneed funds, or  
23 funds issued by an insurance company pursuant to a preneed  
24 contract;

25 (11) Assisting or enabling any person to practice or offer  
26 to practice any profession licensed or regulated by sections  
27 436.005 to 436.072 who is not registered and currently eligible  
28 to practice under sections 436.005 to 436.072;

1       (12) Issuance of a certificate of registration or  
2 authority, permit or license based upon a material mistake of  
3 fact;

4       (13) Failure to display a valid certificate or license if  
5 so required by sections 436.005 to 436.072 or any rule  
6 promulgated hereunder;

7       (14) Violation of any professional trust or confidence;

8       (15) Use of any advertisement or solicitation which is  
9 false, misleading or deceptive to the general public or persons  
10 to whom the advertisement or solicitation is primarily directed;

11       (16) Violation of any statute or regulation related to the  
12 funeral industry or to consumer protection;

13       (17) Having any license, permit, or registration revoked by  
14 any insurance or preneed regulatory agency or professional  
15 licensing board of any state;

16       (18) Violation of any of the provisions of chapter 193,  
17 RSMo, chapter 194, RSMo, or chapter 333, RSMo, and;

18       (19) Willfully and through undue influence selling a  
19 preneed contract.

20       3. After the filing of such complaint, the proceedings  
21 shall be conducted in accordance with the provisions of chapter  
22 621, RSMo. Upon a finding by the administrative hearing  
23 commission that the grounds, provided in subsection 2 of this  
24 section, for disciplinary action are met, the board may, singly  
25 or in combination, censure or place the person named in the  
26 complaint on probation on such terms and conditions as the board  
27 deems appropriate for a period not to exceed five years, or may  
28 suspend, for a period not to exceed three years, or revoke the  
29 license, certificate, or permit.

1       4. Notwithstanding any other provision of this section, the  
2 board may automatically suspend a license if the board finds,  
3 after an inspection, examination, investigation or audit, a  
4 shortage of more than five thousand dollars in any preneed trust  
5 or joint account maintained pursuant to this chapter. Failure to  
6 provide access to the licensee's books, records or accounts as  
7 requested by the board in any inspection, investigation,  
8 examination or audit initiated pursuant to this subsection to  
9 determine whether suspension is warranted shall constitute  
10 grounds for automatic suspension as provided in this section.

11       5. Any person whose license is suspended under subsection 4  
12 of this section may appeal such suspension to the administrative  
13 hearing commission. Notice of such appeal must be received by  
14 the administrative hearing commission within ninety days of  
15 mailing, by certified mail, the notice of suspension. Failure of  
16 a person whose license was suspended to notify the administrative  
17 hearing commission of his or her intent to appeal waives all  
18 rights to appeal the suspension. Upon notice of such person's  
19 intent to appeal, a hearing shall be held before the  
20 administrative hearing commission pursuant to chapter 621, RSMo.

21       6. The board shall only issue a license if the applicant,  
22 or if a business entity, each owner, partner, officer, member, or  
23 controlling ownership interest of the entity, is a person of good  
24 moral character.

25       436.067. [No information given to the board, the division  
26 or the attorney general pursuant to the provisions of sections  
27 436.005 to 436.071 shall, unless ordered by a court for good  
28 cause shown, be produced for inspection or copying by, nor shall  
29 the contents thereof be disclosed to, any person other than the

1 seller, or the provider who is the subject thereof, the  
2 authorized employee of the board, the attorney general or the  
3 division, without the consent of the person who produced such  
4 material. However, under such reasonable conditions and terms as  
5 the board, the division or the attorney general shall prescribe,  
6 such material shall be available for inspection and copying by  
7 the person who produced such material or any duly authorized  
8 representative of such person. The state board, the division or  
9 the attorney general, or his duly authorized assistant, may use  
10 such documentary material or copies thereof in the enforcement of  
11 the provisions of sections 436.005 to 436.071 by presentation  
12 before any court or the administrative hearing commission, but  
13 any such material which contains trade secrets shall not be  
14 presented except with the approval of the court, or the  
15 administrative hearing commission, in which the action is pending  
16 after adequate notice to the person furnishing such material. No  
17 documentary material provided the board, the division or the  
18 attorney general pursuant to the provisions of sections 436.005  
19 to 436.071 shall be disclosed to any person for use in any  
20 criminal proceeding] All complaints, investigation materials,  
21 annual registrations, reports, and information pertaining to the  
22 licensee shall be closed and may be disclosed only as authorized  
23 by statute or order of the court.

24 436.068. 1. The board may promulgate rules to implement  
25 the provisions of sections 436.005 to 436.072 and rules governing  
26 standards of service and practice to be followed by licensed  
27 providers and sellers as deemed necessary for the public good and  
28 consistent with the laws of this state. The board may prescribe  
29 a standard of proficiency as to the qualifications and fitness of

1 those engaging in the practice of the preneed industry.

2 2. The board shall establish the amount of the fees  
3 authorized in sections 436.005 to 436.072 and required by rules  
4 promulgated thereunder. Such fees shall be set at a level to  
5 produce revenue which does not substantially exceed the cost and  
6 expense of administering sections 436.005 to 436.072.

7 3. Any rule or portion of a rule, as that term is defined  
8 in section 536.010, RSMo, that is created under the authority  
9 delegated in this section shall become effective only if it  
10 complies with and is subject to all of the provisions of chapter  
11 536, RSMo, and, if applicable, section 536.028, RSMo. This  
12 section and chapter 536, RSMo, are nonseverable and if any of the  
13 powers vested with the general assembly under chapter 536, RSMo,  
14 to review, to delay the effective date, or to disapprove and  
15 annul a rule are subsequently held unconstitutional, then the  
16 grant of rulemaking authority and any rule proposed or adopted  
17 after August 28, 2008, shall be invalid and void.

18 436.069. 1. [After July 16, 1985,] Each seller shall remit  
19 an annual reporting fee in an amount of [two] ten dollars for  
20 each preneed contract sold in the year since the date the seller  
21 filed its last annual report with the state board of the fee  
22 established by the board by rule. This reporting fee shall be  
23 paid annually and may be collected from the purchaser of the  
24 preneed contract as an additional charge or remitted to the state  
25 board from the [funds] moneys of the seller.

26 2. [After July 16, 1985,] Each provider shall remit an  
27 annual reporting fee of [thirty] fifty dollars, or the annual  
28 reporting fee established by the board by rule.

29 3. The reporting fee authorized by subsections 1 and 2 of

1 this section are in addition to the fees authorized by section  
2 436.071.

3 436.071. Each application for [registration] licensure  
4 under the provisions of section 436.015 or 436.021 shall be  
5 accompanied by a preneed registration fee as determined by the  
6 board pursuant to the provisions of subsection 2 of section  
7 333.111[, subsection 2].

8 436.072. The board or a designated member thereof or any  
9 agent authorized by the board may enter the office, premises,  
10 establishment, or place of business of any preneed seller or  
11 provider of funeral service contracts licensed in this state, or  
12 any office, premises, establishment, or place where the practice  
13 of selling and/or providing preneed funerals is carried on, or  
14 where such practice is advertised as being carried on for the  
15 purpose of inspecting such office, premises, establishment, or  
16 place to determine compliance with sections 436.005 to 436.072,  
17 or for the purpose of inspecting, examining, investigating or  
18 auditing the licensee or the sale of preneed contracts.

19 [436.063. Whenever the state board determines  
20 that a registered seller or provider has violated or is  
21 about to violate any provision of sections 436.005 to  
22 436.071 following a meeting at which the registrant is  
23 given a reasonable opportunity to respond to charges of  
24 violations or prospective violations, it may request  
25 the attorney general to apply for the revocation or  
26 suspension of the seller's or provider's registration  
27 or the imposition of probation upon terms and  
28 conditions deemed appropriate by the state board in  
29 accordance with the procedure set forth in sections  
30 621.100 to 621.205, RSMo. Use of the procedures set  
31 out in this section shall not preclude the application  
32 of the provisions of subsection 2 of section  
33 436.061.]; and  
34

35 Further amend the title and enacting clause accordingly.